

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

RAUL ZUNIGA CASTILLO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM DECISION AND
ORDER DENYING MOTION FOR
DEFAULT JUDGMENT AND
GRANTING PETITIONER'S
MOTION TO RECEIVE COPY AND
FOR EXTENSION OF TIME

Case No. 2:09-CV-1127 TS

In this case under 28 U.S.C. § 2255, Petitioner moved for a default judgment against the government for the failure to file its response by the July 16, 2010 date set by the Court. The government responded that it had timely filed its response.¹ Petitioner then filed a Motion to Receive a Copy of the response and seeking an extension of time to file his reply.² He supports his Motion with his Affidavit averring that he never received the response. His position that he never received the government's response is supported

¹Docket No. 22 (citing June 7, 2010 Response).

²Docket No. 23.

by his August 3, 2010 letter, lodged in the docket on August 20, 2010, inquiring why he had not received an answer by the deadline.³ The certificate of service attached to the government's Response shows that it was served on Petitioner.⁴ However, it was apparently never delivered or logged in at the institution's mail room. The government has been contacted by the undersigned's chambers staff and will not file an objection to the present motion for Petitioner to receive a copy and extend the time to file a reply.

Therefore, it appearing that Petitioner has never received a copy of the government's response, the Court will grant Petitioner's Motion to receive a copy and to extend the reply time. However, since the government did timely file its response, Petitioner's Motion for Default Judgment or Summary Judgment must be denied. It is therefore

ORDERED that Petitioner's Motion to Receive a Copy of Respondent's Response and for an Extension of Time to file a reply (Docket No. 23) is GRANTED. It is further

ORDERED that the Clerk of Court shall mail a copy of Docket No. 19, together with all attachments to Petitioner. It is further

ORDERED that Petitioner shall have until January 4, 2011, to file an optional reply. It is further

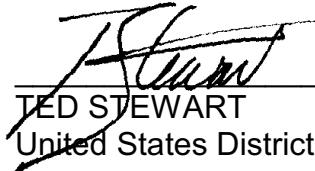
³Docket No. 20.

⁴Docket No. 19, at 2.

ORDERED that Petitioner's Motion for Default Judgment or Summary Judgment (Docket No. 21) is DENIED.

DATED October 27, 2010.

BY THE COURT:



TED STEWART
United States District Judge